Information Processing SVC, Inc. d/b/a Information Processing Services, Inc. *and* Thomas J. Walsh.
Case 5–CA–27896

February 9, 2000

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART MOTION TO STRIKE ANSWER AND FOR SUMMARY JUDGEMENT AND REMANDING

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

Upon a charge filed by Thomas J. Walsh, an attorney, on September 2, 1998, the General Counsel of the National Labor Relations Board issued a complaint on December 15, 1998, and an amended complaint on January 7, 1999, against the Respondent, Information Processing Services, Inc., alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Copies of the charge, complaint and amended complaint were properly served on the Respondent. The Respondent filed letters dated December 24, 1998, and January 15, 1999, purporting to be answers to the complaint and amended complaint respectively.

On June 2, 1999, the General Counsel filed a Motion to Strike Answer and for Summary Judgment with the Board. On June 3, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three- member panel.

Procedural History

The December 15, 1998 complaint alleges that on or about April 22, 1998, the Respondent violated Section 8(a)(1) of the Act by terminating the employment of Michael Morissey, Barry Vann, and David Sherman. The complaint alleges the employees were terminated for concertedly complaining that the Respondent failed to comply with the terms of a wage determination in a government contract. The Respondent, acting pro se, filed a letter dated December 24, 1998, in response to the complaint. The letter, as reproduced verbatim, stated in part:

> IF FOR SOME REASON THESE INDIVIDUALS FEELS [SIC] THAT THEY WERE NOT PAID FAIRLY OR CORRECTLY. THEN WE NEED TO KNOW THIS. AS FOR A COMPLAINT FROM THESE INDIVIDUALS WE HAVE NEVER RECEIVED ANYTHING VERBALLY NOR WRITTEN FROM NEITHER ONE OF THEM. WE CAN NOT CORRECT ANYTHING VERBALLY NOR WRITTEN FROM NEITHER ONE OF THEM. WE CAN NOT CORRECT SOMETHING SOMETHING WE ARE NOT AWARE OF. SEE #4 YOUR COMPLAINT AND NOTICE OF HEARING.
>
> INFORMATION PROCESSING SERVICE DID NOT, HAVE NOT, AND WILL NEVER DISCOURAGE ANY EMPLOYEE FROM ENGAGING IN ANY ACTIVITIES IN WHICH THEY WANT TO ENGAGE THEMSELVES. SEE #5, YOUR COMPLAINT AND NOTICE OF HEARING.[1]

The Respondent was informed both orally and by letter that the December 24, 1998 letter was not an adequate answer. The requirements of Section 102.20 were explained to Respondent. By a letter dated January 7, 1999, the Respondent was informed that an amended complaint had issued and that Respondent had 14 days from the same date to file an answer. The amended complaint issued on January 7, 1999. It stated that failure to comply with the requirements of Section 102.20 would result in the allegations in the amended complaint being deemed true by the Board.

The Respondent submitted a letter dated January 15, 1999, purporting to be an answer to the amended complaint. The letter states that the Respondent has "insufficient information to admit or deny" each and every allegation in the amended complaint. In addition the letter incorporated the Respondent's December 24 letter.

The General Counsel contends in his Motion to Strike Answer and for Summary Judgment that the Respondent's January 15, 1999 letter, which incorporates its December 24, 1998 letter, constitutes an inadequate answer to the complaint under Section 102.20 of the Board's Rules and Regulations. The General Counsel argues that the Respondent's failure to admit or deny allegations that are clearly within Respondent's knowledge warrants striking the entire answer as a sham or fraud. See Section 102.21 of the Board's Rules and Regulations.

Ruling on Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations requires a respondent to admit, deny or explain all allegations in the complaint unless the respondent is without knowledge, in which case the respondent must so state. Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown.

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[1] Complaint par. 4 states: "On or about April 22, 1898, Respondent by Bettie Gray, by letter of the same date, terminated the employment of Michael Morrissey, Barry Vann, and David Sherman, because they concertedly complained about Respondent's failure to comply with the terms contained in the wage determination which covered the service contract C-855S."

Complaint par. 5 states: "Respondent engaged in the conduct described above in par. 4, because the named employees engaged in the conduct described therein, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The General Counsel argues that, "[b]ecause the Respondent was acting pro se, detailed instructions regarding the procedure for filing an answer were given to Respondent at the time the Region issued an Amended Complaint," and despite these instructions the Respondent failed to comply with Section 102.20. We agree, but only in part, with the General Counsel. Where, as here, a respondent is pro se and the answer addresses the substance of the complaint, we are somewhat more lenient regarding compliance with Section 102.20. See *APS Production*, 326 NLRB No. 130 (Sept. 30, 1998). Section 102.20 states in pertinent part that "[t]he respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement acting as a denial." In the instant case, Respondent answered each allegation by asserting that it had insufficient information to admit or deny. In addition, the Respondent attached its December 24, 1998 letter as further answer to the complaint. Given the Respondent's prose status, we find the Respondent's answer and attached letter sufficiently responsive to the complaint paragraphs containing the operative facts of the alleged violations to warrant a hearing on the merits. The Respondent's letter effectively denied that the employees complained about the wage determination (complaint par. 4) and that the Respondent discouraged them from engaging in protected concerted activities (complaint par. 5). We therefore find, contrary to the General Counsel that summary judgment is not appropriate as to paragraphs 4, 5, 6, and 7 of the complaint.[2]

However, to the extent that an answer is a sham, it may be stricken. As to three paragraphs of the complaint, we conclude that it was a sham for Respondent to claim that it had no knowledge. Accordingly, we strike these paragraphs, and grant summary judgment as to them.[3]

ORDER

It is ordered that the General Counsel's request to strike the Respondent's answer with respect to paragraphs 1, 2, and 3 is granted. The allegations set forth in those paragraphs are deemed true.

IT IS FUTHER ORDERED that this proceeding is remanded to the Regional Director for Region 5 for the purpose of arranging a hearing before an administrative law judge limited to the allegations set forth in amended complaint paragraphs 4, 5, 6, and 7. The administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of the Board's Rules shall be applicable.

Dated, Washington, D.C. February 9, 2000

John C. Truesdale, Chairman

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] A respondent's answer that simply states that the respondent is without sufficient knowledge to answer the operative allegations of the complaint may be stricken as sham. *DPM of Kansas*, 261 NLRB 220 fn. 2 (1982) ("any complaint allegations as to Respondent's own conduct must be within its knowledge"). However as to complaint pars. 4, 5, 6, and 7 we find that the Respondent's supplemental letter of December 24, 1998, attached to its answer, effectively denies the allegations of those paragraphs of the complaint. Accordingly, and taking account of the Respondent's pro se status, we deny the General Counsel's motion to strike answer with regard to those paragraphs.

[3] The three paragraphs are:

1. The charge in this proceeding was filed by the Charging Party on September 2, 1998, and a copy was served upon Respondent by regular mail on September 3, 1998.

2. (a) At all material times, Respondent, a Virginia corporation with an office and place of business in Alexandria, Virginia, has been engaged in the business of providing temporary help services, including a contract with the United States Government Printing Office to provide proofreading services for the Internal Revenue Service.

(b) During the past 12 months, Respondent, in conducting its business operations described above in par. 2(a), performed services valued in excess of $38,000 to the United States Government. Respondent does business in the District of Columbia and is subject to the Board's plenary jurisdiction

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

3. At all material times Bettie Gray held the positions of Respondent's vice president and director of operations, and has been a supervisor of Respondent within the meaning of Sec. 2(11) of the Act, and an agent of Respondent within the meaning of Sec. 2(13) of the Act